

FERNANDO ABEITA,
Appellant

v.

DEPUTY COMMISSIONER
OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 98-12-A
:
:
: October 30, 1997

Appellant Fernando Abeita, through counsel, Alan R. Taradash, Esq., Albuquerque, New Mexico, seeks review of a September 11, 1997, Memorandum from the Deputy Commissioner of Indian Affairs (Deputy Commissioner), concerning a conflict of interest under regulations in 43 C.F.R. Part 20, Employee Responsibilities and Conduct. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

The Deputy Commissioner's Memorandum instructed Appellant to direct any appeal to the Deputy Secretary of the Department of the Interior. In his Notice of Appeal and Statement of Reasons to the Board, Appellant contends that his appeal should be before the Board because, in issuing a decision under 43 C.F.R. § 20.735-27, the Deputy Commissioner was acting as a delegatee of the Deputy Assistant Secretary - Indian Affairs, and therefore the decision is appealable to the Board under 25 C.F.R. § 2.4(e).

The Secretary's delegation of authority to the Board is set forth in 43 C.F.R. § 4.1(b)(2), which states:

The Board decides finally for the Department appeals to the head of the Department pertaining to:

(i) Administrative actions of officials of the Bureau of Indian Affairs, issued under 25 CFR chapter I, except as limited in 25 CFR chapter I or § 4.330 of this part, and

(ii) Orders and decisions of Administrative Law Judges in Indian probate matters * * *. The Board also decides such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary - Indian Affairs for exercise of review authority of the Secretary. [Emphasis added.]

There is no question that the Deputy Commissioner's decision was issued under 43 C.F.R. Part 20, not under 25 C.F.R. Chapter I. Furthermore, the matter has not been referred to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Deputy Commissioner's September 11, 1997, Memorandum is docketed, but dismissed for lack of jurisdiction.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge